

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 7970

BILL NUMBER: SB 661

DATE PREPARED: Jan 20, 1999

BILL AMENDED:

SUBJECT: Consumer item pricing rights.

FISCAL ANALYST: Susan Preble

PHONE NUMBER: 232-9867

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) Requires consumer items to be marked with clear and readable prices;
- (2) Exempts certain items from the pricing requirements and allows merchants to select additional exempt items;
- (3) Prohibits merchants from charging more for an item than the price marked on the item;
- (4) Provides that the Attorney General and the Attorney General's consumer protection division are responsible for the implementation and administration of the pricing requirements;
- (5) Establishes advertising standards for consumer items;
- (6) Requires consumer notification if a product offered is defective or is manufacturer rejected goods;
- (7) Provides for enforcement of requirements and for penalties to violators;
- (8) Exempts media from liability for commercial advertising;
- (9) Allows an action by the Attorney General or a prosecutor and a private civil action for violations of pricing rights;
- (10) Provides for settlement of certain types of overcharges;
- (11) Allows merchants to settle for difference in price and price charged plus ten times the difference, with a minimum payment of \$1 and a maximum payment of \$5.

Effective Date: July 1, 1999.

Explanation of State Expenditures: This bill may increase state expenditures because it requires the Consumer Protection Division of the Office of the Attorney General to implement and administer the consumer items pricing rights established by the bill. The Division's duties will include investigating complaints regarding the violation of the consumer items pricing rights statute as the Attorney General deems necessary. It may also file an action in a trial court to enjoin a continuing violation of the statute.

The funds and resources required to do this could be supplied through a variety of sources, including the

following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Office of the Attorney General is authorized 263 full-time positions. Of that total, as of December 31, 1998, there are 22 full-time positions vacant. The breakdown of the 22 vacancies by position type is as follows: 3 departmental counsels, 1 trial deputy, 5 field investigators, 1 field auditor, 1 administrative assistant, 2 office managers, 5 secretaries, 3 account clerks, and 1 clerical assistant.

In the Consumer Protection Division specifically, there are 2 vacancies out of 42 authorized positions (1 trial deputy, and 1 field investigator). Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. This bill makes no appropriation.

Explanation of State Revenues: This bill may increase state revenues because it provides that a person who knowingly violates its provisions will be required to pay a civil penalty of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. All penalties are deposited in the Common School Fund.

If the number of civil filings increase, the revenue from filing fees also increases. The civil action filing fee is \$100. If the action is filed in a trial court, 70% is deposited into the state General Fund. If the action is filed in a city or town court, the State General Fund receives 50%.

Explanation of Local Expenditures: This bill may increase local expenditures for trial courts, clerks, and prosecuting attorneys. It allows an alleged violator of the consumer items pricing rights statute to file a written assurance of discontinuance with the clerk, but provides that a filing fee will not be required to file such assurances.

The bill allows a prosecuting attorney to conduct an investigation and initiate and prosecute an action for a violation of the statute. If the Attorney General or the prosecuting attorney fails to take action within 60 days after receiving notification of an alleged violation, this bill also allows a person to file an action seeking a declaratory judgment or an injunction against a person who is violating or is about to violate the provisions of this bill.

Under certain circumstances, a person who suffers loss as a result of a violation of this bill's provisions may bring an individual or class action suit to recover either actual damages or \$250 for each day violations have been found, whichever is greater. The person may also be awarded attorney's fees up to \$300 in an individual action.

Additional civil action filings may increase the caseloads of some trial courts or city or town courts. The county general fund pays the trial courts' operating expenses. The general fund of the city or town in which the court is located pays the expenses of the city and town courts.

Explanation of Local Revenues: If the action is filed in trial court, the county general fund receives 27% of the \$100 filing fee. The other 3% is deposited in the general fund of the cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county, or municipal court located in the county.

State Agencies Affected: Office of the Attorney General

Local Agencies Affected: Prosecuting attorneys; trial courts; circuit court clerks

Information Sources: J.D. Lux, Office of the Attorney General, (317) 233-8438; *State of Indiana HRM Staffing Report* (12-31-98 run date), State Personnel Department; IC 33-19-7.